

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JEANNA E. SEAT,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner
of Social Security,

Defendant.

NO: 12-CV-0166-TOR

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT are the parties' cross motions for summary judgment (ECF Nos. 14, 16). These matters were heard without oral argument on November 21, 2012. Plaintiff is represented by Rebecca M. Coufal. Defendant is represented by David J. Burdett. The Court has reviewed the administrative record and the parties' completed briefing and is fully informed. There being no reason to delay a decision, the hearing set for January 24, 2014, is vacated and this matter is submitted without oral argument. For the reasons discussed below, the Court grants Defendant's motion and denies Plaintiff's motion.

1 JURISDICTION

2 The Court has jurisdiction over this case pursuant to 42 U.S.C. § 405(g).

3 STANDARD OF REVIEW

4 A district court's review of a final decision of the Commissioner of Social
5 Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is
6 limited: the Commissioner's decision will be disturbed "only if it is not supported
7 by substantial evidence or is based on legal error." *Hill v. Astrue*, 688 F.3d 1144,
8 1149 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means
9 relevant evidence that "a reasonable mind might accept as adequate to support a
10 conclusion." *Id.* (quotation and citation omitted). Stated differently, substantial
11 evidence equates to "more than a mere scintilla[,] but less than a preponderance."
12 *Id.* (quotation and citation omitted). In determining whether this standard has been
13 satisfied, a reviewing court must consider the entire record as a whole rather than
14 searching for supporting evidence in isolation. *Id.*

15 In reviewing a denial of benefits, a district court may not substitute its
16 judgment for that of the Commissioner. If the evidence in the record "is
17 susceptible to more than one rational interpretation, [the court] must uphold the
18 ALJ's findings if they are supported by inferences reasonably drawn from the
19 record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district
20 court "may not reverse an ALJ's decision on account of an error that is harmless."

1 *Id.* at 1111. An error is harmless “where it is inconsequential to the [ALJ’s]
2 ultimate nondisability determination.” *Id.* at 1115 (quotation and citation omitted).
3 The party appealing the ALJ’s decision generally bears the burden of establishing
4 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

5 FIVE-STEP SEQUENTIAL EVALUATION PROCESS

6 A claimant must satisfy two conditions to be considered “disabled” within
7 the meaning of the Social Security Act. First, the claimant must be “unable to
8 engage in any substantial gainful activity by reason of any medically determinable
9 physical or mental impairment which can be expected to result in death or which
10 has lasted or can be expected to last for a continuous period of not less than twelve
11 months.” 42 U.S.C. § 423(d)(1)(A). Second, the claimant’s impairment must be
12 “of such severity that he is not only unable to do his previous work[,] but cannot,
13 considering his age, education, and work experience, engage in any other kind of
14 substantial gainful work which exists in the national economy.” 42 U.S.C. §
15 423(d)(2)(A).

16 The Commissioner has established a five-step sequential analysis to
17 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §
18 404.1520(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s
19 work activity. 20 C.F.R. § 404.1520(a)(4)(i). If the claimant is engaged in
20

1 “substantial gainful activity,” the Commissioner must find that the claimant is not
2 disabled. 20 C.F.R. § 404.1520(b).

3 If the claimant is not engaged in substantial gainful activities, the analysis
4 proceeds to step two. At this step, the Commissioner considers the severity of the
5 claimant’s impairment. 20 C.F.R. § 404.1520(a)(4)(ii). If the claimant suffers
6 from “any impairment or combination of impairments which significantly limits
7 [his or her] physical or mental ability to do basic work activities,” the analysis
8 proceeds to step three. 20 C.F.R. § 404.1520(c). If the claimant’s impairment
9 does not satisfy this severity threshold, however, the Commissioner must find that
10 the claimant is not disabled. *Id.*

11 At step three, the Commissioner compares the claimant’s impairment to
12 several impairments recognized by the Commissioner to be so severe as to
13 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §
14 404.1520(a)(4)(iii). If the impairment is as severe or more severe than one of the
15 enumerated impairments, the Commissioner must find the claimant disabled and
16 award benefits. 20 C.F.R. § 404.1520(d).

17 If the severity of the claimant’s impairment does meet or exceed the severity
18 of the enumerated impairments, the Commissioner must pause to assess the
19 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),
20 defined generally as the claimant’s ability to perform physical and mental work

1 activities on a sustained basis despite his or her limitations (20 C.F.R. §
2 404.1545(a)(1)), is relevant to both the fourth and fifth steps of the analysis.

3 At step four, the Commissioner considers whether, in view of the claimant's
4 RFC, the claimant is capable of performing work that he or she has performed in
5 the past ("past relevant work"). 20 C.F.R. § 404.1520(a)(4)(iv). If the claimant is
6 capable of performing past relevant work, the Commissioner must find that the
7 claimant is not disabled. 20 C.F.R. § 404.1520(f). If the claimant is incapable of
8 performing such work, the analysis proceeds to step five.

9 At step five, the Commissioner considers whether, in view of the claimant's
10 RFC, the claimant is capable of performing other work in the national economy.
11 20 C.F.R. § 404.1520(a)(4)(v). In making this determination, the Commissioner
12 must also consider vocational factors such as the claimant's age, education and
13 work experience. *Id.* If the claimant is capable of adjusting to other work, the
14 Commissioner must find that the claimant is not disabled. 20 C.F.R. §
15 404.1520(g)(1). If the claimant is not capable of adjusting to other work, the
16 analysis concludes with a finding that the claimant is disabled and is therefore
17 entitled to benefits. *Id.*

18 The claimant bears the burden of proof at steps one through four above.
19 *Lockwood v. Comm'r of Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010). If
20 the analysis proceeds to step five, the burden shifts to the Commissioner to

1 establish that (1) the claimant is capable of performing other work; and (2) such
2 work “exists in significant numbers in the national economy.” 20 C.F.R. §
3 404.1560(c); *Beltran v. Astrue*, 676 F.3d 1203, 1206 (9th Cir. 2012).

4 ALJ’S FINDINGS

5 On September 29, 2009, Plaintiff applied for a period of disability and
6 disability insurance benefits alleging disability since August 16, 2006. Tr. 12, 115.
7 Her application was denied initially and on reconsideration. Tr. 66-70. Plaintiff
8 filed a timely request for hearing and appeared with an attorney at a hearing before
9 an administrative law judge (“ALJ”) on December 2, 2010. Tr. 30-65.

10 The ALJ issued his decision on January 21, 2011, finding that Plaintiff was
11 not disabled because she could perform her past relevant work as a hairdresser. Tr.
12 19-20. On February 2, 2012, the Appeals Council denied Plaintiff’s request for
13 review, making the ALJ’s decision the Commissioner’s final decision. Tr. 1-5; 20
14 C.F.R. § 404.981.

15 ISSUES

16 Plaintiff, Jeanna E. Seat, seeks judicial review of the Commissioner’s final
17 decision denying her a period of disability and disability insurance benefits under
18 Title II of the Social Security Act. Plaintiff has identified two issues for review.
19 First, Plaintiff argues that the ALJ improperly discredited her testimony about the
20 severity of her symptoms. ECF No. 15 at 7-11. Second, Plaintiff asserts that the

1 ALJ erred in not adjusting her disability onset date and considering her disabled in
2 2008 when she turned 60 years old. *Id.* at 11-12.

3 The Commissioner contends he supported the final decision in this matter
4 with substantial evidence and that it is free of any harmful legal error.

5 DISCUSSION

6 **A. The ALJ's Adverse Credibility Findings**

7 In social security proceedings, a claimant must prove the existence of
8 physical or mental impairment with "medical evidence consisting of signs,
9 symptoms, and laboratory findings." 20 C.F.R. § 404.1508. A claimant's
10 statements about his or her symptoms alone will not suffice. 20 C.F.R. §§
11 404.1508; 404.1527. Once an impairment has been proven to exist, the claimant
12 need not offer further medical evidence to substantiate the alleged severity of his or
13 her symptoms. *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (en banc).
14 As long as the impairment "could reasonably be expected to produce [the]
15 symptoms," 20 C.F.R. § 404.1529(b), the claimant may offer a subjective
16 evaluation as to the severity of the impairment. *Id.* This rule recognizes that the
17 severity of a claimant's symptoms "cannot be objectively verified or measured."
18 *Id.* at 347 (quotation and citation omitted).

19 In the event that an ALJ finds the claimant's subjective assessment
20 unreliable, however, "the ALJ must make a credibility determination with findings

1 sufficiently specific to permit [a reviewing] court to conclude that the ALJ did not
2 arbitrarily discredit claimant's testimony.” *Thomas v. Barnhart*, 278 F.3d 947, 958
3 (9th Cir. 2002). In making such a determination, the ALJ may consider, *inter alia*:
4 (1) the claimant’s reputation for truthfulness; (2) inconsistencies in the claimant’s
5 testimony or between his testimony and his conduct; (3) the claimant’s daily living
6 activities; (4) the claimant’s work record; and (5) testimony from physicians or
7 third parties concerning the nature, severity, and effect of the claimant's condition.
8 *Id.* The ALJ may also consider a claimant’s “unexplained or inadequately
9 explained failure to seek treatment or to follow a prescribed course of treatment.”
10 *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008). If there is no evidence
11 of malingering, the ALJ’s reasons for discrediting the claimant’s testimony must
12 be “specific, clear and convincing.” *Chaudhry v. Astrue*, 688 F.3d 661, 672 (9th
13 Cir. 2012) (quotation and citation omitted). The ALJ “must specifically identify
14 the testimony she or he finds not to be credible and must explain what evidence
15 undermines the testimony.” *Holohan v. Massanari*, 246 F.3d 1195, 1208 (9th Cir.
16 2001).

17 Here, Plaintiff argues that the ALJ improperly rejected her testimony
18 concerning the severity of her symptoms. Specifically, Plaintiff argues that the
19 ALJ failed to offer clear and convincing reasons for rejecting her statements that
20 (1) the epidural steroid injections only worked for a short period of time (Tr. 239);

1 (2) that she could not continue the caregiver job by February 2010 (Tr. 42); (3) that
2 her son and her friends take her shopping and they carry it in and out of her house
3 because she can't lift anything (Tr. 44); and (4) that she did very little housework
4 on any given day as her house was only 600 square feet (Tr. 50). ECF 15 at 10-11.
5 Plaintiff asserts that this testimony, if properly credited, preclude her from
6 performing her past relevant work and therefore the matter must be remanded.

7 The ALJ provided specific, clear and convincing reasons for discrediting
8 Plaintiff's testimony. The ALJ found Plaintiff's medically determinable
9 impairments could reasonably be expected to produce some degree of symptoms,
10 but her statements regarding the intensity, persistence, and limiting effects of his
11 symptoms were not entirely credible to the degree they were inconsistent with the
12 residual functional capacity assessment (Tr. 16).

13 As to the first subject, the ALJ observed that Plaintiff reported doing
14 stretching exercises and receiving injections to her spine, which decreased pain.
15 Tr. 16, 48. She received epidural steroid injections in August 2007 and February
16 2008, which improved her symptoms. Tr. 16. Following the procedure, the doctor
17 observed Plaintiff walking without difficulty. *Id.* The ALJ noted that the next
18 medical report of record addressing Plaintiff's back pain wasn't until December
19 2009, over one and a half years later. *Id.* The ALJ found that the record showed
20 only conservative and routine treatment for her back, that she had no back surgery,

1 that stretching, doing yoga, and using a heating pad helped and that this
2 conservative treatment was inconsistent with the alleged severity of her
3 impairments. Tr. 18.

4 Second, the Plaintiff testified that her caregiver position ended because her
5 client no longer required her services. Tr. 18, 41. Significantly, she did not quit
6 because of her impairments. Tr. 18. While she did testify that she could no longer
7 “pick her [client] up off the floor,” Tr. 42, that alone is not inconsistent with the
8 light limited residual functional capacity found by the ALJ.

9 As to the third and fourth subjects, the ALJ found that Plaintiff’s daily
10 activities are quite involved. Tr. 18. She testified that no one helps her around the
11 house; she washes dishes and vacuums one room of her apartment every day.
12 Tr. 18, 50-51. She reads, watches television, prepares meals, cares for pets, goes
13 outside five days a week, uses public transportation and is able to drive. Tr. 18,
14 49-50, 178, 180. The ALJ found she goes grocery shopping twice a month with
15 her son’s assistance and that all these activities are consistent with a limited light
16 residual functional capacity. Tr. 18.

17 Having thoroughly reviewed the record, the Court finds that the ALJ
18 supported his adverse credibility findings with specific, clear and convincing
19 findings which are supported by substantial evidence. Accordingly, the Court
20 concludes that the ALJ did not arbitrarily discredit Plaintiff’s testimony.

B. The Period of Disability the ALJ Considered

Plaintiff asserts that the ALJ erred in not adjusting her disability onset date and considering her disabled in 2008 when she turned 60 years old. *Id.* at 11-12. She reasons that “special rules” for persons closely approaching retirement age would then apply to her, citing 20 C.F.R. § 404.1563(e). *Id.* at 12. Plaintiff filed an application for disability with a protective onset date of December 16, 2006, and at the administrative hearing Plaintiff’s counsel offered that “any date up to April 2008” would work. Tr. 33-34.

By this argument, Plaintiff appears to concede the ALJ’s step 2 finding that she was engaged in substantial gainful activity and not disabled through December 31, 2007. Tr. 14. Plaintiff misunderstands that the ALJ’s decision did in fact encompass a review of Plaintiff’s condition in 2008, indeed, the ALJ considered the entire period of time “from August 16, 2006, through the date of this decision [January 21, 2011].” Tr. 20. Accordingly, adjusting her alleged onset date would have no bearing on the ALJ’s decision.

“Special rules” for persons closely approaching retirement age concern the transferability of skills in a step five analysis. See 20 C.F.R. §§ 404.1562(b), 404.1568(d)(4). Since the ALJ found Plaintiff could return to her past relevant work as a hairdresser at step four, transferability of skills is not at issue. The ALJ did not err.

1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 1. Plaintiff's Motion for Summary Judgment (ECF No. 14) is **DENIED**.

3 2. Defendant's Motion for Summary Judgment (ECF No. 16) is

4 **GRANTED.**

5 The District Court Executive is hereby directed to file this Order, enter
6 Judgment for Defendant, provide copies to counsel, and **CLOSE** this file.

7 **DATED** this 28th day of January, 2013.

8 *s/ Thomas O. Rice*

9 THOMAS O. RICE
10 United States District Judge